

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 03-7176**

---

JEFFREY D. WHITAKER,

Petitioner - Appellant,

versus

JAMES EDGAR DEMPS, Attorney & Counsel at law,

Respondent - Appellee.

---

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (CA-03-819)

---

Submitted: February 25, 2004

Decided: March 29, 2004

---

Before MOTZ, GREGORY, and SHEDD, Circuit Judges.

---

Dismissed by unpublished per curiam opinion.

---

Jeffrey D. Whitaker, Appellant Pro Se.

---

Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Jeffrey D. Whitaker seeks to appeal the district court's order dismissing without prejudice his petition filed under 28 U.S.C. § 2254 (2000), for failure to exhaust state remedies. An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2254 petition solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F. 3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 122 S.Ct. 318 (2001). We have reviewed the record and conclude for the reasons stated by the district court that Whitaker has not made the requisite showing. See Whitaker v. Demps, No. CA-03-819 (E.D. Va. filed July 7, 2003 & entered July 9, 2003). Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED